

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION

NO. 5:11-CV-456-FL

DAVID R. CORBIN, )  
Plaintiff, )  
v. )  
CHIEF JUSTICE LYNN JOHNSON; )  
CHIEF JUSTICE ELIZABETH KEEVER; )  
JUDGE KIMBERLY TUCKER; JUDGE )  
ABRAHAM JONES; ELLEN HANCOCK; )  
and DAWN DRIGGERS, )  
Defendants. )

ORDER

This matter comes before the court on motion to dismiss filed by defendants Chief Justice Lynn Johnson, Chief Justice Elizabeth Keever, Judge Kimberly Tucker, Judge Abraham Jones, and Ellen Hancock (DE # 20) and motion to dismiss filed by defendant Dawn Driggers (DE # 13). Pursuant to 28 U.S.C. § 636(b)(1) and Federal Rule of Civil Procedure 72(b), the motions to dismiss were referred to United States Magistrate Judge Robert B. Jones, Jr. for memorandum and recommendation (“M&R”). On February 24, 2012, the magistrate judge entered M&R wherein he recommends that the court dismiss this matter with prejudice on the ground that it is barred by *res judicata* or, alternatively, for failing to state a claim for which relief may be granted. After one extension, plaintiff timely filed an objection. Also before the court is plaintiff’s motion to award relief (DE # 29). The issues raised are ripe for ruling.

Defendants' motions to dismiss are before the court with benefit of the magistrate judge's analysis. The district court reviews *de novo* those portions of a magistrate judge's M&R to which

specific objections are filed. 28 U.S.C. § 636(b). The court does not perform a *de novo* review where a party makes only “general and conclusory objections that do not direct the court to a specific error in the magistrate’s proposed findings and recommendations.” Orpiano v. Johnson, 687 F.2d 44, 47 (4th Cir. 1982). Absent a specific and timely filed objection, the court reviews only for “clear error,” and need not give any explanation for adopting the M&R. Diamond v. Colonial Life & Acc. Ins. Co., 416 F.3d 310, 315 (4th Cir. 2005); Camby v. Davis, 718 F.2d 198, 200 (4th Cir.1983). Upon careful review of the record, “the court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1)(c).

This is the second time that the court has reviewed this exact claim. (see Corbin v. Johnson, et al., 5:11-CV-148-FL, E.D.N.C.) In fact, the complaint filed in 5:11-CV-148 is identical to the instant claim. This first case was dismissed for failure to state a claim for which relief may be granted. As this matter has already come before this court, the matter will not be relitigated, as the claim has already been judged on its merits.

Upon careful review of the M&R, the court finds the magistrate judge’s analysis to be thorough, and there is no clear error. The court hereby ADOPTS the recommendation of the magistrate judge as its own, and, for the reasons stated therein, plaintiffs’ complaint is DISMISSED WITH PREJUDICE. Plaintiff’s motion to award relief is DENIED as MOOT. The clerk of court is directed to close the case.

SO ORDERED, this the 9th day of August, 2012.



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LOUISE W. FLANAGAN  
United States District Court Judge